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7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. **2013-83**

11 **JAMES PIUS MICHUTA**
12 P.O. Box 1926
Sausalito, CA 94966

A C C U S A T I O N

13 **Registered Nurse License No. 631388**

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
19 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
20 of Consumer Affairs.

21 2. On or about January 22, 2004, the Board of Registered Nursing issued Registered
22 Nurse License Number 631388 to James Pius Michuta (Respondent). The Registered Nurse
23 License was in full force and effect at all times relevant to the charges brought herein and will
24 expire on December 31, 2013, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Registered Nursing (Board),
27 Department of Consumer Affairs, under the authority of the following laws. All section
28 references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license.

8 **STATUTORY AND REGULATORY PROVISIONS**

9 6. Section 2761 of the Code states, in pertinent part:

10 The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 (a) Unprofessional conduct, which includes, but is not limited to, the following:

13 (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing
14 functions.

15 ...

16 7. California Code of Regulations, title 16, section 1442, states:

17 As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from
18 the standard of care which, under similar circumstances, would have ordinarily been exercised by
19 a competent registered nurse. Such an extreme departure means the repeated failure to provide
20 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
21 situation which the nurse knew, or should have known, could have jeopardized the client's health
22 or life.

23 8. California Code of Regulations, title 16, section 1443, states:

24 As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
25 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
26 exercised by a competent registered nurse as described in Section 1443.5.

27 9. California Code of Regulations, title 16, section 1443.5 states:

28 A registered nurse shall be considered to be competent when he/she consistently

1 demonstrates the ability to transfer scientific knowledge from social, biological and physical
2 sciences in applying the nursing process, as follows:

3 (1) Formulates a nursing diagnosis through observation of the client's physical condition
4 and behavior, and through interpretation of information obtained from the client and others,
5 including the health team.

6 (2) Formulates a care plan, in collaboration with the client, which ensures that direct and
7 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
8 for disease prevention and restorative measures.

9 (3) Performs skills essential to the kind of nursing action to be taken, explains the health
10 treatment to the client and family and teaches the client and family how to care for the client's
11 health needs.

12 (4) Delegates tasks to subordinates based on the legal scopes of practice of the
13 subordinates and on the preparation and capability needed in the tasks to be delegated, and
14 effectively supervises nursing care being given by subordinates.

15 (5) Evaluates the effectiveness of the care plan through observation of the client's physical
16 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
17 communication with the client and health team members, and modifies the plan as needed.

18 (6) Acts as the client's advocate, as circumstances require, by initiating action to improve
19 health care or to change decisions or activities which are against the interests or wishes of the
20 client, and by giving the client the opportunity to make informed decisions about health care
21 before it is provided.

22 COST RECOVERY

23 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
24 administrative law judge to direct a licensee found to have committed a violation or violations of
25 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
26 enforcement of the case.

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1 **FACTUAL SUMMARY**

2 11. On or about December 16, 2010, Respondent was working as a nurse at Kaiser
3 Permanente Hospital in San Rafael, California. Respondent was assigned to provide nursing care
4 to Patient A.¹

5 12. Respondent decided to insert a naso-gastric tube into Patient A in order to administer
6 liquid medication. Patient A's physician had not ordered insertion or use of a naso-gastric tube.
7 Patient A, who was awake and competent, refused to consent to insertion of the tube and
8 attempted to physically resist insertion of the tube. Respondent forcibly restrained Patient A and
9 inserted the tube while Patient A struggled to prevent insertion of the tube and loudly insisted that
10 she would not consent to the procedure. As a result of the procedure, Patient A experienced pain,
11 discomfort and a nosebleed.

12 **FIRST CAUSE FOR DISCIPLINE**

13 (Gross Negligence/Incompetence)

14 13. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
15 he acted with gross negligence and/or incompetence, as set forth above in paragraphs 11-12.

16 **SECOND CAUSE FOR DISCIPLINE**

17 (Unprofessional Conduct)

18 14. Respondent is subject to disciplinary action under section 2761(a) of the Code in that
19 he acted unprofessionally, as set forth above in paragraphs 11-12.

20 **PRAAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 631388, issued to James
24 Pius Michuta;

25 2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of
26 the investigation and enforcement of this case, pursuant to Business and Professions Code section

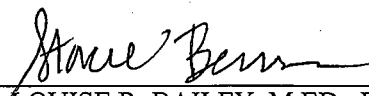
27 _____
28 ¹ The identity of Patient A is withheld to protect patient privacy.

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125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/24/2012

for 
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant